IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 325 of 2006

Date of decision:- 17/05/2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Initials of Judge

Date :- 17/5/2006

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.325 of 2006

1. Smt. Jagwati W/o Shri Harswaroop Singh
2. Harswaroop Singh S/o Budha Singh
   R/o village Dharampura
   P.S. Haldaur
   Bijnor, District .....Applicants

Versus

1. State of Uttaranchal
2. District & Sessions Judge, Haridwar
3. Judicial Magistrate, Roorkee
   District Haridwar
4. Mamta D/o Zalim Singh
   R/o House No. 528 Preet Bihar Colony
   Ganeshpur, P.S. Gangnaher
   Roorkee, District Haridwar ...Respondents

Sri Manish Arora learned counsel for the applicants.
Sri Amit Bhatt learned AGA.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the order dated 02.04.2004 passed by the Judicial Magistrate, Roorkee, District Haridwar in case No.331/2003 State Vs. Pramod & others under sections 498A, 323, 504, 504, 3/4 D.P. Act and judgment & order dated 12.09.2005 passed by the Sessions Judge, Haridwar in criminal revision No.125/2004.

2. Brief facts of the case are that on 20.04.2005 an FIR was lodged by the respondent No.4 against six persons including the present applicants with the allegations that marriage was solemnized between the respondent No.4-Mamta and Pramod Kumar on 08.03.2000. After the marriage, Pramod Kumar and other family members started to demand the dowry. The police investigated the matter and submitted the

chargesheet against three persons, namely Pramod Kumar, Dulari and Dhayan Singh. However, the names of the present applicants were dropped in the chargesheet. Later on the trial proceeded and the trial magistrate recorded the statement of respondent No.4, who has categorically stated in her statement that the co-accused including the present applicants demanded dowry from her father. When the said demand was not fulfilled she was subjected to ill-treatment. It was further alleged that Pramod, Harswaroop, Jagwanti, Maya & Dulari have assaulted her and by which she sustained the injuries on his person. After recording of the statement of the respondent No.4, an application under section 319 Cr.P.C. was moved by the prosecution to summon the applicants in the alleged case. The said application was allowed by the learned Magistrate, who summoned the applicants fixing a date for their appearance vide order dated 02.04.2004. Feeling aggrieved by the order of the Magistrate, the applicants preferred a revision before the Sessions Judge. The learned Sessions Judge dismissed the revision. Feeling aggrieved by this, the present petition has been filed before this Court.

3. Learned counsel for the applicants contended that the order passed by the Magistrate is erroneous and he had not applied his mind while passing the order. It was further contended that the learned Magistrate erred in holding that there is a prima facie case against the applicants. It was further contended that the learned Magistrate would not have summoned the present applicants unless he was hopeful that there are reasonable prospect of the case against the newly added accused. Learned AGA refuted the contention. Powers

Under Section 319 Cr.P.C. can be invoked in appropriate situations. This section is extracted below:-

> *"319. Power to proceed against other persons appearing to be guilty of offence – (i) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.*
>
> *(ii) Where such person is not attending the court, he may be arrested or summoned, as the circumstances of the case may required, for the purpose aforesaid."*
>
> *(iii) any person attending the court, although not under arrest or upon a summons, may be detained by such court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.*
>
> *(iv) Where the court proceeds against any person under sub-section (1) then (a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard; (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced."*

4. Section 319 Cr.P.C. gives an ample power to the court to take cognizance and add any person not being accused before it and try him alongwith accused persons sent up for trial. This extraordinary power shall be exercised sparingly and only if compelling reasons exist.

Perusal of that section reveals that the scope of this section is wide enough to include cases instituted on complaint. All the cases where there is evidence for adding any person not being an accused before it and direct to try him alongwith other accused persons, the basic requirement for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arrayed as an accused in that case, has committed an offence for which that person could be tried together with the accused already arrayed. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried alongwith the already arrayed accused. It has been interpreted by the catena of decisions by the Apex Court that when the evidence shows that there is enough involvement of the accused in the commission of the offence, then the said accused stands on the same pedestal as the other accused stand. But even then, what is conferred on the court is only a discretion as could be discerned from the words "*the court may proceed against such person*". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that other person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of

evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons. **{See Michael Machado & another Vs. C.B.I. 2000 SCC (Cri) p/609}.**

5. In the case of **Krishnappa Vs. State of Karnataka 2004 SCC(Cri) p/2093,** the appellant was arrayed as one fo the accused alongwith others in a case before the trial magistrate relating to an incident of the year 1993 which led to certain simple injuries and damage to some crops. The High Court quashed the case against the appellant in 1995 in a petition filed under section 482 Cr.P.C. Thereafter, 17 prosecution witnesses were examined and the statement under section 313 Cr.P.C. was recorded. The role of the appellant was shown only to instigate the accused persons. The Magistrate dismissed the application filed under Section 319 Cr.P.C. The High Court set aside the said order and directed to summon the appellant. The Hon'ble Supreme Court considering the above facts had held that the power to summon an accused is an extraordinary power conferred on the court. It is discretionary and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. In that case, the Hon'ble Supreme Court did not go into the question whether prima-facie the evidence implicates the appellant or not and whether the possibility of his conviction is remote, or his presence and instigation stood established. The Hon'ble Supreme Court was of the view that the exercise of discretion by the magistrate, in any event of the matter, did not call

for interference by the High court, having regard to the facts and circumstances of the case.

6. Learned counsel for the applicants further relied upon the decision of the Hon'ble Supreme Court in **Kailash Vs. State of M.P. 2006(1) SCC (Cri) p/764.** I have gone through the said judgment, but considering the facts and circumstances of the present case the said decision is not applicable. Learned counsel for the applicants further relied upon the decision of the Hon'ble Supreme Court in **Palanisamy Gounder & another Vs. State 2006(1) SCC (Cri) p/568** in which the trial court allowed the application filed under section 319 Cr.P.C. The trial court has also observed that though the case against the persons proposed to be added was not on solid foundation but they had to be impleaded as accused in order to find out the real truth. The trial court has also observed that in order to find out the real truth the appellants deserved to be added as accused. The Apex Court while relying upon the cases namely Krishnappa (supra) and Michael (supra) set aside the order of the trial court and observed that the power under section 319 cannot be exercised so as to conduct a fishing inquiry. The instant judgment of the Apex Court is not applicable in this case. In the instant case, the respondent No.4 had been examined as PW1 and she is narrated the whole incident. She had stated that the present applicants including the other accused demanded the dowry from her father. When the said demand was not fulfilled they assaulted her. The statement clearly reveals that there is sufficient evidence to summon the applicants. The court below has also noticed that the applicants were nominated in the FIR and they had not been arrayed as accused in the

chargesheet. The magistrate can exercise the power conferred on him under section 319 Cr.P.C. only after recording the evidence.

7. In view of the facts and circumstances of the case, the petition devoids of merit and is liable to be dismissed. The petition is dismissed accordingly. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 17.05.2006
LSR